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Department of Land Revenue and Settlement.

OFFICE The Board of Revenue

STATION Madras

File No. 2959

Dated 21-10-38

B 6263/38

10-day.

Spl

Pages in the file

(SUBJECT.)

Suit : Lessees - Mangalore S.M.C.C.S No. 318/38 - Ambiampadi type - SNO. 10/1 Por - Reservation for [illegible] and Village grass - Defence - Sanction

~~B. 9/42~~

~~B3~~

B42 62/45

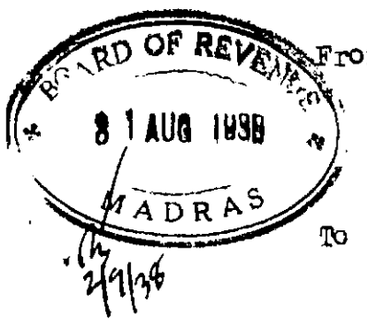
B 3

R.P.158 B2
F 4817

Ref.A3.No.4612-38.

South Kanara Collector's Office,
Mangalore, 26th August 1938.

Hg 8.10.38
B62/63



From

Sri Rao Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary to the Board of Revenue,
Land Revenue and Settlement, Madras.

Sir,

SUITS - Mangalore Dt. Munsif's Court - O.S.No.318-38 - Baikampady village - S.No.10/1-Por.-

---

S.No.10/1 of Baikampady village, Mangalore taluk measuring 39.65 acres stood registered as assessed waste at settlement. But, some time prior to or subsequent to the settlement this plot appears to have been reserved for the purpose of removal of grass. In 1907 when a list of all lands reserved in the district was consolidated, this plot was also included therein and formal orders were issued in this office Dis.139-R/07 dated 13.4.1907 reserving the plot for communal purposes. Subsequently in 1911 the plot was transferred to poramboke in Collector's Dis.3064-D-1911 dated 29.9.1911 which records however have since been destroyed.

2. Nothing further transpired regarding this plot till 1935 when one of the plaintiffs filed a criminal complaint against some villagers of Kenjar and Thokur villages for having removed kaje grass from this plot. The accused were discharged as the complainant failed to establish an invasion of civil right. As plaintiffs were doubtful whether they could establish any exclusive right to the plot in a civil court in view of its registry as poramboke, plaintiffs for the first time applied on 25.6.36 for the insertion of a clause in the registry that the plot was reserved for the exclusive use of the villagers of Kannirbhavi and Panambur villages. The petition was rejected in Collector's proceedings D.Dis.3057-36 dated 11.8.36. ---

Plaintiffs soon after sought for a reconsideration of the above order. An elaborate enquiry was held in this case by the Revenue Divisional Officer, Mangalore. It was found that the plaintiffs had been exclusively rearing and using the grass from this plot for a very long time past, that they were keeping a watchman for the purpose on an annual payment of Rs.4/- in cash and 12 muras of rice which they collected from the villagers of Thannirbhavi and Panambur by subscription every year. The plaintiffs alleged during the enquiry that the land had been set apart for the --- exclusive use of the villagers of Thannirbhavi and Panambur villages in Collector's order No.355 of fasli 1261. This order however is not forthcoming either with the plaintiffs or among the official records. The plaintiffs however substantiated their case by -- producing some other records which made mention of this order of fasli 1261. The inhabitants of Thokur and Kenjar villages who were the opposing claimants at the time also substantiated their claim by adducing oral evidence in support of their alleged enjoyment. They however had no material documentary evidence in their favour except the Collector's order of 1907 and the judgment of 1935 of the Stationary Sub Magistrate. In view of the intricate legal questions involved, the Government Pleader, Mangalore was ---- consulted whether in the circumstances of the case Government would be involved in ~~any~~ any civil litigation if the registry of the plot were to be altered according to the request of the plaintiffs. The Government Pleader (in his letter dated 25.5.37 in R.Dis. 6134-36) opined that in matters of the kind the Revenue officials must be left to their own judgment and that their judgment could not be questioned either by the villagers or by civil courts. The petition was accordingly rejected on 7-6-37 in Collector's R.Dis.6134-36 dated 7-6-37. The plaintiffs thereupon appealed to the Board of Revenue which in its proceedings B.P.Mis.C.No. 3532 L.R. dated 15-11-37 dismissed the petition. The plaintiffs then sent me in last April a suit notice. In view of the opinion expressed by the Government Pleader and in view of the opposing claims of the residents of Kenjar and Thokur villages, I thought

it expedient to maintain the status quo and accordingly recorded the suit notice. Hence the present suit which is for a declaration that the plaintiffs and other wargdars of Thannirbhavi and a portion of Panambur village are entitled to the exclusive use of the kaje grass grown on S.No.10-1 of Baikampady village.

3. I have consulted the Government Pleader again. He is of opinion that in view of the reports of revenue officials, it will not be possible to deny many of the --- allegations in the plaint, that the villagers of Panambur and Thannirbhavi villages have been openly and exclusively using the grass in the plot and keeping a watch over the land, that they claimed to have the authority of the Collector's order No.365/1261 reserving the land for their exclusive use, that the evidence of continuous use will be evidence of the original grant, and that there will be evidence of the fact that they have been enjoying the land for more than 60 years, so as to acquire thereby a prescriptive right. He is therefore of opinion that the defence that will have to be put up will be only of a technical nature. He has therefore drafted a written statement on these lines.

4. There has been no precedent in this district where land in a village was set apart for the exclusive use of the villagers of a different village. Moreover, Government are the absolute owners of land lying at their disposal and as previously remarked by the Government Pleader, their discretion cannot be fettered by claims of the kind. I request that the Board may be pleased to sanction the defence of the suit and to approve the enclosed draft written statement prepared by the Government Pleader and slightly modified by me.

5. The plaint is dated 11.7.38. I received a copy of the plaint on 25.7.38. The suit stands posted to 8.10.38. The records detailed in the margin are enclosed for ------

Enclsures.

1. Collector's Dis.No.139 R-1907. (W) reference.
2. " D.Dis.3057/36. (B)
3. " R.Dis.6134/36. (T)
4. " D.Dis.4459/37. (A)
5. " D.Dis.2148/38. (S)

For Collector.

6. Mangalore Tahsildar's D.R.339-F-1319. (F) 29.8.38 29.8.38
7. " Dis.263 R/1911. (R)
8. Copy of plaint. pp 11-18 CF
9. Copy of draft written statement pp 5-7 CF
10. Copy of Government Pleader's letter dated 17.8.38. p 9 CF

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.No.318/1938.

Between:-

P. Sham Rau and others — Plaintiffs.

and

The Province of Madras and others. — Defendants.

Written statement of the 1st defendant under Order VIII Rule 1 of Act V of 1908.

The abovenamed defendant begs to state as follows:-

1. The address of this defendant is as stated in the plaint.

2. This defendant admits that S.No.10/1 of Baikampady village, Mangalore Taluk measuring 39 acres 65 cents now stands registered as Poramboke in the Revenue Registers, but this defendant does not admit that it was being exclusively enjoyed by owners of Ryotwari lands of Tannirbhavi village and by those wargdars of Panambur Kasba village owning ryotwari lands in Panambur village situated to the west of the Public road running from the Kuloor Ferry to Pavanje for any definite purpose and puts plaintiff to strict proof of the allegations in para 3 (c) of the plaint. The land being poramboke or communal land, not reserved for any class of persons, was open for enjoyment by the general public.

3. It is not admitted that the aforesaid wargdars were using the said land S.No.10/1 for the purpose of growing, rearing and cutting kaje grass openly, exclusively, peaceably, continuously and as a matter of right from time immemorial so as to acquire any legal right therein or thereto as against the Government or that the said right as such has been recognised by the Government so as to preclude them from dealing with it in any other manner. Plaintiffs are put to strict proof of the allegations in plaint paragraphs 3(d) and (e). The land was classed as assessed waste at the time of the settlement and as it was thought fit to reserve it for communal purposes it was ordered by the Collector to be ----

registered as poramboke in 1911 but no exclusive right thereof to any class of people has ever been recognised by the Government.

4. It is further denied that any ascertained or ----- ascertainable set or body was enjoying the said land in any definite mode so as to confer on them, any definite legal right in the said land. It is also denied that the right claimed is one recognised by law and enforcible as such.

5. This defendant denies that there is any entry in the authorised Prohibitive Order Books maintained by the Collector or by his subordinates in respect of this plot and much less of its exclusive reservation in favour of any class of persons.

6. It is admitted that some of the residents of Panambur and Tannirbhavi village approached the Collector and the Board of Revenue to alter the registry of the plot in the revenue records but as the Collector and the Board of Revenue saw no reasons to change the existing entry they declined to do so. It is denied that the said action of the Revenue Authorities confers on, or gives any cause of action to the plaintiffs to question it in a Civil Court. The suit so far as this defendant is concerned is misconceived. The registration of land in the settlement registers for communal purposes does not imply any grant to the villagers and the right of the Government to assign such land is not restricted by the condition that the villagers would be prejudiced thereby. As such, the Government has got complete powers of disposition over the land to deal with it in any manner it likes and the action of the Revenue Authorities cannot be questioned either by the villagers or by the Civil Courts.

7. The land having been reserved as assessed waste at the time of the settlement and as Poramboke in 1911, to the knowledge of the plaintiffs, their rights if any must be deemed to be denied on the said dates and the present suit is therefore long barred by limitation.

8. In any case the rights of the plaintiffs having been

disturbed in September 1935, they are not entitled to maintain the present suit which is barred by limitation.

9. Some of the wargdars of Panambur and Tannirbhavi villages most of them being the present plaintiffs filed a petition dated May 1936, but received by the Collector on 25th June 1936 asking for the relief that the suit land may be exclusively reserved in favour of the wargdars of Panambur and Tannirbhavi villages. The Collector by his order dated 11.8.1936 dismissed the said application. The present suit filed more than a year after the passing of the said order is barred by limitation. The cause of action has been wrongly shown in the plaint.

10. The land being that of the Government, the user if any of the plaintiffs or the wargdars of Panambur and Tannirbhavi was permissive, or that of a licensee and this will not in any way prejudice the right of the Government to deal with the said land in any manner that it likes at a subsequent stage. The plaintiffs are therefore not entitled to claim any right in respect of the said land on the strength of any user thereof up till now.

11. Previous permission of Court not having been obtained under Order 1 Rule 8 C.P.C. for permission by the plaintiffs to sue in a representative character, the present suit for such relief is not maintainable in law.

12. All the other allegations not expressly traversed herein are hereby denied.

Prays therefore that plaintiffs suit as against this defendant may be dismissed with costs.

For Collector.

29/8/38 29.5.38

From Sri K. Sadashiva Rao, B.A.,L.L., Government Pleader, Mangalore.
To the Collector of South Kanara.
Mangalore, dated 17-8-1938.
Ref. No. A.502/1938.

SUITS - Mangalore Dt. Munsif's Court - O.S.No.318/38- Baikampady village - S.No.10/1 Poramboke - Draft written statement -

Ref:- Your letter C.4612-38-A3 dated 9.8.1938.

I am herewith forwarding the draft written statement to be filed on behalf of the Government in the above suit. From the various reports of the Revenue officials and the summary of the documents as given in the office note it seems to me that the villagers of Panambur and Tannirbhavi have been exclusively using kaje grass grown on the S.No.10/1 of Baikamp village for manuring their lands, and that they were keeping a watch over the said lands between the months of June and December. This, it appears to me, they were doing openly from about fasli 1261 ever since the order of the Collector No. 365/1261 fasli reserving the said lands for their exclusive use. That they have been so using it continuously will be evidence of the original grant in their favour. Even in case the order is not produced there will be evidence to show that they have been enjoying the land for more than 60 years to acquire a prescriptive right.

In drafting the written statement I have generally put them proof of the allegations set out because in the face of the reports of the Revenue officials it is not possible to deny many of the allegations made in the plaint, and the --- defences raised are mainly technical.

The records sent to me are herewith returned.

/True copy/

For Collector.

29/8/38

In the Court of the District Munsif of Mangalore.

Original Suit No. 318/1938.

Between:

1. P. Shama Rao.
2. P.G. Padmanabhaya
3. M. Madappaya
4. P. Sankappayya.
5. P.C. Krishnayya.
6. B. Krishna Rao.
7. Ramakrishnaiya.
8. Vasudeva Aithala.
9. Krishna Aithala.
10. Venkatramana Upadya.
11. K. Parameshwara Holla
12. P.C. Sheshappayya.
13. Kelappu Shetty — Plaintiffs.
14. Anthony Souza.
15. Neve alias Mathes Souza
16. Koti Pujary
17. Rangaya Aithala
18. P.C. Janardhana Rao
19. P.C. Hayagriva Rao
20. Aitha Baidya
21. Daniel Souza.
22. Juav Souza.
23. Shankernarayana Rao
24. P.T. Thimmappaya.
25. Buddi Vasudevayya.
26. Aluva Madappayya.)
27. Devase Krishna Rao.
28. T. Narayana Rao.
29. Gangayya Pujary
30. Potail Krishna Rao

and

1. The Province of Madras represented by the Collector of South Kanara.
2. Narna Pujary
3. Rajappa Pujary
4. Vodi Pujary.
5. Thyampa Pujary
6. Domba Shetty.

Defendants.

Dated the 7 - 1938.

Plaint under section 26 and Order I Rule 8 and Order VII Rules 1 and 2 of Act V of 1908.

Plaintiffs abovenamed beg to state as follows:-

1. Plaintiffs (1) P. Shama Rao son of Vakil Sheenappayya, Brahmin, land holder agend about 63 years; (2) P.C. Padmanabhayya son of Chatra Vasudevayya, Brahmin, land lord aged about 30 years; (3) M. Madappayya son of Ramappayya, land holder aged about 35 years, Brahmin; (4) P. Sankappayya son of Nazar Krishnayya, Brahmin land holder aged about 60 years; (5) P.C. Krishnayya son of Vasudevayya, Brahmin land holder aged about 29 years; (6) B. Krishna Rao son of Subba Rao, Brahmin land holder aged 25 years; (7) Ramakrishnayya son of Narnappayya, Brahmin land holder aged about 40 years; (8) Vasudeva Aithala son of Ranga Aithala, Brahmin land holder aged 65 years; (9) Krishna Aithala son of Vamana Aithala, Brahmin land holder, aged 62 years; (10) Venkatramana Upadhya son of Krishna Upadhya, Brahmin land holder aged about 50 years; (11) K. Parameshwara Holla son of Padmanabha Holla, Brahmin land holder aged about 40 years; (12) P.C. Sheshappayya son of Narnappayya, Brahmin land holder aged 45 years; (13) Kelappa Shetty son of Thyampanna Shetty, Bunt land holder aged about 30 years; (14) Anthony Souza son of Inas Souza, Roman Catholic Christian, land holder aged about 50 years; (15) Nove alias Mathese Souza son of Duje Souza, R.C. Christian

bus

land holder aged 60 years; (16).Koti Pujary son of Basa Pujary, Billawar, land holder aged about 58 years; (17) Rangayya Aithala, son of Vasudeva Aithala, Brahmin land holder, aged about 36 years; (18) P.C. Janardhana Rao son of P.C.Vasudevayya, Brahmin, land holder aged 26 years; (19) P.C. Hayagriva Rao son of P.C. Vasudevayya, Brahmin, land holder aged about 24 year (20)Aitha Baidya son of Devi Hengsu, Billawa, land holder aged about 58 years; (21) Daniel Souza son of Duje Souza, R.C. Christian land holder aged 52 years; (22) Juav Souza son of Duje Souza, R.C. Christian land holder aged about 50 years; (23) Shankarnarayana Rao son of T. Subraya Karantha, Brahmin land holder aged about 58 years; (24). P.T. Thimmappayya son of Venkappayya, Brahmin, landholder aged 68 years; 25). Buddi Vasudevayya son of Dasappayya, Brahmin landholder aged about 60 years; 26) Aluva Madappayya son of Puttannayya, Brahmin landholder aged about 35 years; 27) Devase Krishna Rao son of Govinda Rao Brahmin landholder aged about 31 years; 28) T. Narayana Rao son of Krishna Upadhyaya, Brahmin landholder aged about 38 years; (29) Gangayya Pujary son of Balu Pujary, Billavar, landholder aged about 50 years; and 30) Potail Krishna Rao son of Laxminarnappayya, Brahmin, landholder and Potail aged about 46 years. Plaintiffs Nos.1 to 22 reside in Panambur village, 23rd Plaintiff resides in Mangalore Town, and 24 to 30 reside in Thannirbhavi village of Mangalore Taluk. The address of the plaintiffs for service of all processes etc. is as above.

2. That Defendants 1) The Province of Madras is represented by the Collector of South Kanara, Mangalore Town, 2) Narne Pujary aged 50 years, 3) Rajappa Pujary aged 35 years, 4) Vodi Pujary aged 32 years - are the nephews of Manjappa Pujary, Billavars, landholders residing in Bangi Kudru of Thokur village, Mangalore Taluk, 5) Thyampa Pujary aged 48 years, is the grandson of Dere Pujary, Billavar, cultivator by profession, residing in Thodia House of Thokur village, 6) Domba Shetty aged 46 years is the nephew of Vasu Shetty,

Bunt by caste, landholder, residing in Kenjar village, Mangalore Taluk. The address of the defendants for service of processes is as above.

3. (a) Plaintiffs are the owners and pattadars of Ryotwari lands in Panambur Kasba and Thannirbhavi villages of Mangalore Taluk and sue on behalf of themselves and all others having the same interest in the subject matter of this suit.

(b) The defendants Nos.2 to 5 are the residents of Thokur village, Mangalore and they are sued on behalf of themselves and the villagers of Thokur village while 6th defendant is the resident of Kenjar village, Mangalore Taluk and they are sued on behalf of themselves and all the villagers of Kenjar village.

(c) That S.No.10/1 of Baikampady village, Mangalore Taluk measuring 39 acres and 65 cents which has been registered as Poramboke in the Revenue Register has been enjoyed by the wargdars i.e., owners of Ryotwari lands of Thannirbhavi village and by those wargdars of Panambur Kasba village owning ryotwari lands in Panambur village situated to the west of the public road running from the Kuloor ferry to Pavanje for growing 'kaje' grass which is used as manure for the cultivation of their Ryotwari lands. The said wargdars keep a watch to conserve the "Kaje" grass which grows on the said plot and the grass is cut and utilised by the said wargdars for the purpose of manuring in proportion to their respective holdings. The watch is kept from July till the end of December and it is during this period that the wargdars cut the grass and utilise the same for the purpose of manuring as aforesaid.

(d) That this right has been enjoyed by the wargdars aforesaid exclusively, openly, peaceably and as a matter of right from time immemorial and has even been recognised by the Government and the wargdars aforesaid have acquired a legal right to enjoy the said survey No. 10/1 and the "Kaje"

grass growing thereon in the manner aforesaid.

(e) That the plaintiffs as such wargdars have been and are still exercising and enjoying the said right and before them their predecessors have been exercising and enjoying the said right.

(f) That the plaintiffs learn and verily believe that the Prohibitory Order Book relating to Baikampady village shows that the said land has been reserved for "Kaje" grass for the use of the cultivation of the villagers of Thannirbhavi and Panambur Kasba villages - a clear recognition by the Government of the right claimed by the plaintiffs. Plaintiffs also learn and believe that the Government has recognised this right in various proceedings from Fasli 1261 onwards.

(g) That the villagers of Thokur and Kenjar have no right whatsoever to interfere with the legal right aforesaid of the wargdars of Thannirbhavi and Panambur Kasba villages and they have no right to cut the "Kaje" grass growing on the said S.No.10/1 during the period aforesaid namely from July till the end of December every year.

(h) That defendants 3 to 6 who are the residents of Thokur and Kenjar villages in or about September 1935 cut and removed some "Kaje" grass from the said S.No.10/1, and consequently 25th plaintiff filed a complaint of theft against them which was registered as Calendar Case No. 418/1935 on the file of the Stationary II Class Magistrate of Mangalore. The accused were however discharged on the ground that the exclusive right claimed on behalf of the wargdars of Thannirbhavi and Panambur Kasba villages had not been established and if there was an invasion of such a right relief should be sought in a Civil Court.

(i) That the plaintiffs thereafter applied to the Collector of South Kanara by petition, dated 1.11.1936 to alter the condition in the Prohibitory Order ~~Book~~ with

regard to the said S.No.10/1 of Baikampady village as is as follows: "Transfer to Poramboke for rearing and cutting 'Kaje' grass exclusively to the wargdars of Thanneerbhavi and Panamour villages". Defendants 3 to 6 who are the residents of Thokur and Kenjar villages disputed the right claimed by the plaintiffs and objected to the change of registry and the Collector ----- declined to alter the existing registry of the said plot and the order of the Collector was confirmed by the Board of Revenue on 15-11-1937.

(j) That the Plaintiffs thereafter caused a notice contemplated by Section 80 of the Civil Procedure Code and dated 4-4-1938 to be issued to the Collector of South Kanara setting forth the reliefs claimed and the grounds on which it was --- claimed. The Collector has sent a reply stating that the notice has been recorded.

(k) That though in September 1935 some "Kaje" grass was removed by the defendants 3 to 6 aforesaid, no attempt thereafter has been made till now by the villagers of Thokur and Kenjar to remove any Kaje grass from the said S.F.No.10/1 during the period when the plaintiffs are entitled and cut and remove the same as stated above. But the plaintiffs apprehend that as the defendants 3 to 6 have denied the right claimed by the plaintiffs and as the accused were discharged and as the application by the plaintiffs to the Collector of South Kanara was rejected and the order of the Collector was confirmed by the Board of Revenue, the villagers of Thokur and Kenjar will interfere with the right of the plaintiffs. Plaintiffs are therefore obliged to file this suit claiming necessary reliefs.

(l) The 1st defendant has been impleaded as a defendant as the Government has failed to expressly recognize the right claimed by the plaintiffs and to alter the registry and as the right is sought to be established against the Government also.

(m) That the cause of action for the suit accrued since September 1935 when defendants 3 to 6 removed some "Kaje"

grass and also since 7-6-1937 when the Collector dismissed the application of the plaintiffs and since 15-11-1937 when the order of the Collector was confirmed by the Board of Revenue and since 5-6-1938 when the period of two months from the date of notice expired in Baikampady village where the land is situated and in Thannirbhavi and Panambur Kasba villages where the lands for the benefits of which the right is claimed are situated and in Thokur and Kenjar villages where the defendants reside, all within the jurisdiction of this court.

5. The Plaintiffs estimate the value of the reliefs claimed in this suit at Rs.120-0-0 for purposes of ----- Jurisdiction and a court fee of Rs.16-10-0 is paid on this plaint under Section 7 (IV-d), Art. I, Schedule I and Section 7- Art. XVII (iii) Schedule II of the Court Fees Act.

6. Plaintiffs have applied by separate petitions for permitting them to file this suit on behalf of themselves and all other persons having the same interest and also f permitting them to sue the defendants 2 to 6 on behalf of all the villagers of Thokur and Kenjar villages.

7. Plaintiffs therefore pray for judgment and decre

(a) Declaring that the plaintiffs and all other wargdars of Ryotwari pattadars of Thannirbhavi village of Mangalore Taluk and the wargdars or Ryotwari pattadars of Panambur Kasba village of Mangalore Taluk, owning ryotwari lands in Panambur Kasba village situated to the west of the public road leading from Koolur Ferry to Pavanje are exclusively are entitled to grow, conserve and cut and utilise the 'Kaje' grass growing on S.No.10/1 of Baikampady village of Mangalore Taluk during the months

of July, August, September, October, November and December every year. Relief valued for purposes of jurisdiction at Rs.	105-0-0
A fixed Court fee of Rs.15/- is paid on this relief as per Section 7 Art.XVII (iii), Schedule II of the Court fees Act and Art.17-A1 of the Madras C.F.Amendment Act V of 1922.	
(b) A permanent injunction restraining defendants 2 to 6 and the villagers of Thokur and Kenjar villages of Mangalore Taluk from cutting and removing any "Kaje" grass from S.No.10/1 of Baikampady village during the months of July, August, September, October, November and December every year. Relief valued under Clause (d) of Section VII, paragraph IV (d) Art. I Schedule I of the Court fees Act.	
An ad-valorem court fee of Rs.1-10-0 is paid on this relief under Article I.	Rs. 15-0-0
Total Rs.	120-0-0

(c) Making provision for the payment of plaintiffs costs of this suit.

(d) Granting such other and further reliefs which under the circumstances the court deems fit to grant.

Panambur village
Mangalore Taluk
Dated 11-7-1938.

Original plaint signed and verified by Plaintiffs.

Sd/- Shrinivasa Rao P.

Advocate for Plaintiffs.

/True copy/

For Collector

10.8.38.

C.F. 16.

DRAFT FOR APPROVAL. 7.W.S

	Date.	Initials.
When received for fair copying ..	28/9	S.D
When copied ..	28/9	
When examined..	29/9	
When signed	29/9	
When despatched.		

SUBJECT:—

Suits (S. Kanara) - Mangalore A.M.C. — C.S. No. 318/38 - Baikampadi Vge - S. No. 10/1, Por - Reservation for rearing and cutting grass - defence

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ ALSO:-

B No. 6263 From the Coll^r of S Kanara Ref A No. 4612/38, dated 26.8.1938. Q

B " 6652 " G.P. Madras Opinion " 32 " 26.9.1938. A

" _____ " _____ " _____ " _____ 19____.

Order / Resolution Rout. Ref ce No. B 6263/38-2, dated _____ 28.9 1938.

Madras.

I have t coll^r on 11/10 Dw

VO reference to the 5th Pa and of his A copy of the opinion of the Govt Pleader, Madras thereon as cited above are forwarded to the Coll^r. He is requested to submit at a very early date in consultation with the local G.P a revised draft written statement with reference to the Madras G.P's opinion.

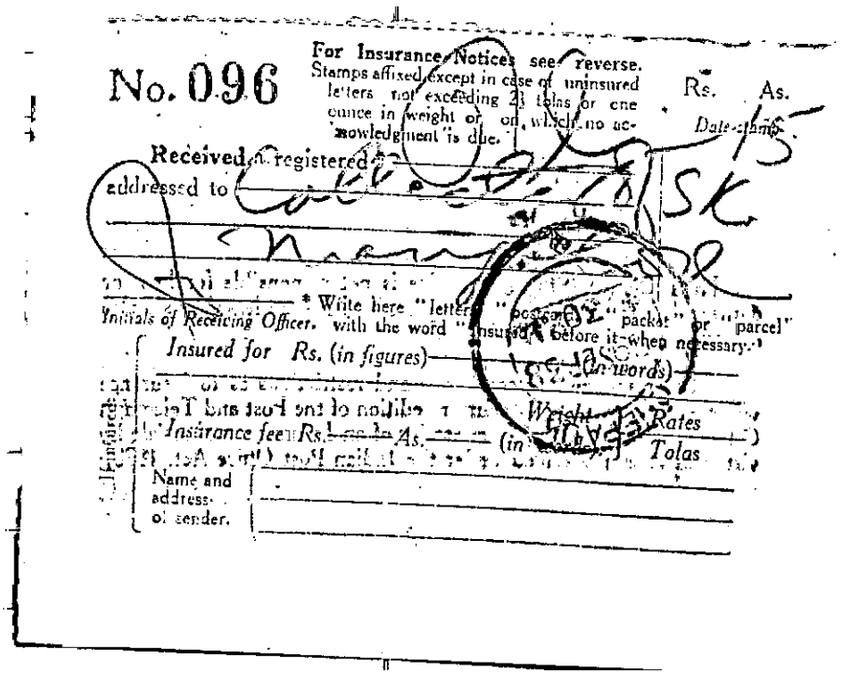
Dw 27/9 B 27.9.38

28/9

28/9

To The Coll^r of S. Kanara with records as per list at p 4 C.F. (Items 1-7 only) and with a copy of Bd's R.O. No. B. 6263/38-1, d/ 15.9.38

pp 7-8 N.F to be copied



No. 096

For Insurance Notices see reverse.
Stamps affixed, except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.

Rs. As.

Date-stamp.

Received registered * addressed to

* Write here "letter," "postcard," "packet" or "parcel" with the word "insured" before it when necessary.

Initials of Receiving Officer.

Insured for Rs. (in figures) (in words)

Insurance fee Rs. As. (in figures) (in words)

Weight Rates Tolas

Name and address of sender.

-21- B7001

Urgent.
Ref.C.4612-38-A3.

South Kanara Collector's Office,
Mangalore, 15th October 1938.

From

Sri Rao Bahadur M. V. Vellodi, B.A.,
Collector of South Kanara.

To

The Secretary to the Board of Revenue,
Land Revenue & Settlement,
Madras.

Sir,

Suits - Mangalore Dt.Munsif's Court - O.S.318/38 - Baikampady village - S.No.10/1 - Poramboke - Reservation for rearing and cutting grass - Defence -

Ref:- Board's Ref.B.No.6263/38-2 dated 28.9.38. 1/1947

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I enclose a revised draft written statement prepared in consultation with the Government Pleader, Mangalore. As the suit plot does not form kumaki to the adjoining kadim lands on account of its registry as Poramboke, the sub-paragraph proposed by the Government Pleader, Madras, has not been --- incorporated in the revised draft written statement.

2. The suit stands adjourned to 9.11.38 for filing the written statement.

Encls.
1. Collector's Dis.No.139 R/1907. (W)
2. " D.Dis.3057-36. ✓ (B)
3. " R.Dis.6134/36. ✓ (T)
4. " D.Dis.4459/37. ✓ (A) (S)
5. " D.Dis.2148/38. ✓
6. Mangalore Tahsildar's D.R.339/1319. (F)
7. " " Dis.263 R/1911. (R)

The records noted in the margin are enclosed.

S Nunamale
15/10
For Collector.

MK 15.10.38.

*sent separately.

In the Court of the District Munsif of Mangalore.

O.S.No. 318/1938.

Between:-

P. Sham Rau and others ... Plaintiffs.

and

The Province of Madras and others.) ... Defendants.

Written statement of the 1st defendant under Order VIII Rule 1 of Act V of 1908.

The abovenamed defendant begs to state as follows:-

1. The address of this defendant is as stated in the plaint.

2. This defendant admits that S.No. 10/1 of Baikampady village, Mangalore Taluk measuring 39 acres 65 cents now stands registered as Poramboke in the Revenue Registers, but this defendant does not admit that it was being exclusively enjoyed by owners of Ryotwari lands of Tannirbhavi village and by those wargdar of Panambur Kasba village owning ryotwari lands in Panambur village situated to the west of the Public road running from the Kuloor Ferry to Pavanje for any definite purpose and puts plaintiff to strict proof of the allegations in para 3 (c) of the plaint. The lands being poramboke or communal land, not reserved for any class or persons, was open for enjoyment by the general public.

3. It is not admitted that the aforesaid wargdars were using the said land S.No. 10/1 for the purpose of growing, rearing and cutting kaje grass openly, exclusively, peaceably, continuously and as a matter of right from time immemorial so as to acquire any legal right therein or thereto as against the Government or that the said right as such has been recognised by the Government so as to preclude them from dealing with it in any other manner. Plaintiffs are put to strict proof of the allegations in plaint paragraphs 3 (d) and (e). The land was classed as assessed waste at the time of the settlement and as it was thought fit to reserve it for communal purposes

it was ordered by the Collector to be registered as poramboke in 1911 but no exclusive right thereof to any class of people has ever been recognised by the Government.

4. It is further denied that any ascertained or ascertainable set or body was enjoying the said land in any definite mode so as to confer on them, any definite legal right in the said land. It is also denied that the right claimed is one recognised by law and enforcible as such.

5. This defendant denies that there is any entry in the authorised Prohibitive Order Books maintained by the Collector or by his subordinates in respect of this plot and much less of its exclusive reservation in favour of any class of persons.

6. It is admitted that some of the residents of Panambur and Tannirbhavi villages approached the Collector and the Board of Revenue to alter the registry of the plot in the revenue records but as the Collector and the Board of Revenue saw no reasons to change the existing entry they declined to do so. It is denied that the said action of the Revenue Authorities confers on, or gives any cause of action to the plaintiffs to question it in a Civil Court. The suit so far as this ----- defendant is concerned is misconceived. The registration of land in the Settlement registers for communal purposes does not imply any grant to the villagers and the right of the Government to assign such land is not restricted by the condition that the villagers would be prejudiced thereby. As such, the Government has got complete powers of disposition over the land to deal with it in any manner it likes and the action of the Revenue Authorities cannot be questioned either by the villagers or by the Civil Courts.

7. The land having been reserved as assessed waste at the

time of the settlement and as Poramboke in 1911, to the knowledge of the plaintiffs, their rights if any must be deemed to be denied on the said dates and the present suit is therefore long barred by limitation.

8. In any case the rights of the plaintiffs having been disturbed in September 1935, they are not entitled to maintain the present suit which is barred by limitation.

9. Some of the wargdars of Panambur and Tannirbhavi villages most of them being the present plaintiffs filed a petition dated May 1936 but received by the Collector on 25th June 1936 asking for the relief that the suit land may be exclusively reserved in favour of the wargdars of Panambur and Tannirbhavi villages. The Collector by this order dated 11.8.1936 dismissed the said application. The present suit filed more than a year after the passing of the said order is barred by limitation. The cause of action has been wrongly shown in the plaint.

10. The land being that of the Government, the user if any of the plaintiffs or the wargdars of Panambur and Tannirbhavi was permissive or that of a licensee and this will not in any way prejudice the right of the Government to deal with the said land in any manner that it likes at a subsequent stage. The plaintiffs are therefore not entitled to claim any right in respect of the said land on the strength of any user thereof up till now.

11. The lands in question being unreserved land coming within rule 7 of the rules framed under section 26 of the Madras Forest Act is governed by the provisions of that rule and the alleged enjoyment of the plaintiff, if any, is referable to the concessions allowed under that rule and cannot form the foundation of enforceable right or claim against the Government. Under that rule, the Collector has the absolute right to decide which are the neighbouring villages and the plaintiffs are bound by his decision and have no

right to litigate in Civil Courts in respect of that matter. The privilege is not a legal right in respect of which an action will lie in Civil Courts. Any enjoyment prior to the framing of the rules, even if true, also is mere permissive enjoyment by sufferance of Government and it is totally inadmissible to infer an enforceable right against the Government from such permissive user.

12. Previous permission of court not having been obtained under order 1 Rule 8 C.P.C. for permission by the plaintiffs to sue in a representative character, the present suit for such relief is not maintainable in law.

13. All the other allegations not expressly traversed herein are hereby denied.

Prays therefore that plaintiffs suit as against this defendant may be dismissed with costs.

South Kanara Collector's Office,
Mangalore, 15th October 1938.

For Collector.

Enclosures to Collector's letter Ref. C.4612-38-A3 dated 15.10.38 to the Secretary, Board of Revenue, L.R.& S., Madras in reply to Board's Ref. B.No.6263/38-2 dated 28.9.38.

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1. Collector's Dis.No.139 R/1907.
2. " D.Dis.3057/36.
3. " R.Dis.6134/36.
4. " D.Dis.4459/37.
5. " D.Dis.2148/38.
6. Mangalore Tahsildar's D.R.339/1319.
7. -do- Dis.263 R/1911.

***

R.P 145
B

Received
6/c
20/10
Senior Supdt.

29

DRAFT FOR APPROVAL. O.F. 16.

F.W.S

	Date.	Initials.
When received for fair copying ..	5.6 21.10	DS
When copied ...	21/10	
When examined..	21/10	D.R.M.
When signed ...	21/10/38	
When despatched.		

SUBJECT:— Suits (S. Kanara) - Mangalore D.M.C C.S No. 318/38 - Baikampadi Vge - S No. 10/1 Por - Reservation for rearing and cutting grass - defence - Sanctioned.

READ AGAIN ——— , dated ——— 19——.

" " ——— " ——— 19——.

READ *ALSO*:—

pp 21-26 cf — B No. 7001 From the Coll^r of S. Kanara Ref No. 4612/38A3, dated 15-10-1938 — Q.

" ——— " ——— " ——— " ——— 19——.

" ——— " ——— " ——— " ——— 19——.

~~Order~~ Resolution ~~Memo.~~ Ms. No. 2959, dated 21-10-1938.

The Board sanctions the defence of the suit and approves the draft written statement submitted by the Coll^r with his letter cited above subject to the substitution of words "land set apart for the common use of the Villagers" for "communal land" in para 2 of the written statement.

hw 20/10 — 21/10

pp 23-26 cf.

21/10

p. 23 cf

To the Coll^r of S. Kanara with records.

1) Coll^r's Dis No. 139 R/1907
2) " D. Dis No. 3057/36
3) " R. Dis. 6134/36
4) " D. Dis 4459/37
5) " D. Dis. 2148/38
6) Mangalore taluk O.R. 339/1319
7) " Dis. 263 R/1911

Suits -- (S.Kanara Mangalore) - Mangalore & M C -
G.S.No. 318/38 -- Baikampady Vge - S.No. 10/1
Por - Reservation for rearing and cutting
Kaji grass - Defence - orders -

p 1-3 cf -- B 6 & 63 From the

To AS(I.R)

Kind reference is solicited to the Clrs letter at pp 1-3 cf, plaint at 11-18 cf and to the draft written statement at pp 5-7 cf.

S.No. 10/1 of Baikampadi Vge, Mangalore Tk, measuring 39.65 acres was registered as 'assessed waste dry and it was reserved for common use of the Villagers in Clrs R.Dis No. 139-R/1907 d/13.4.1907. It was transfered to Poramboke in Clrs Dis 30 64 D/Rev/11 d/29.9.1911 - Sketch at p 9 cf of (B). This land is used for the growth of Kaje grass - a kind of grass used chiefly for manure.

p 70 of (W)
p 1 of (R)

It appears that the Wargdars of Tannirbhavi and Peramboke Vgs have long been enjoying the exclusive right to rear and cut kaji grass in this plot of land. When the neighbouring Villagers of Kanjar and Thokur trespassed on this right, the plaintiffs filed a complaint in the Sub-magistrate's court. The accused were discharged. The plaintiffs then approached the Colr and requested that

the plot S No. 10/1 of Baikampadi Vge may be registered as poramboke for rearing and cutting grass exclusively for the Wargdars of Tamirbhari and Penambur Vgs. The Colr after consulting the local G.P declined to ~~do so~~ ~~the existing registry of the land~~. On appeal the Board also declined to interfere with the Colr's order — B.P. 3532 dt/15-11-37 pp 173-174 of (T) (R) (V)

The plaintiffs have now filed a civil suit in the Mangalore D.M.C for the declaration that the plaintiffs and other Wargdars of Tamirbhari and Penambur Vgs should have the sole right to rear and cut kaji grass in the suit plot and for a permanent injunction restraining the defendants ~~and~~ 2 to 6 and the villagers of Thokur and Kenjar Vgs of Mangalore Tk from cutting and removing any kaji grass from the said plot during the months of July, Aug., Sept, Oct., Nov. and December every year. pp 17-18 of.

The Colr has consulted the G.P in the matter and The G.P's opinion is at p 9 C.F. He considers that the Villagers of Penambur and Tamirbhari have been exclusively

using the kaji grass grown on the land. There will be evidence to show that they have been enjoying the land for more than 60 years to acquire a prescriptive right.

The defence of the suit will be only of a technical nature. The caller states that Govt's ~~hands~~ discretion cannot be fettered by claims of the kind since they are the absolute owners of the land lying at their disposal.

para 10, p 7 of

..... kind attention is also invited to the remarks of Latey, at p 5 n.f of (P) he states that such a right as the plaintiff claim certainly cannot be enacted or recognised by an entry in the Revenue Accounts.

The defence of the suit may be sanctioned and the d. written statement at pp 5-7 may be also subject to the substitution of the words "land set apart for the common use of the villagers" by "Communal land" in para 2 of the W.S

p 5 of

Mr 8/9

Mr 8/9

Mr 8/9

We may be able to improve on this writ by reference to the Forest Manual. The subject is in the Kingdom but the VD Manual s 32 Forests & Topes - para 5 is in point.

1/23

The land in question is an unreserved land
as defined in the Forest act & the cutting
of trees on it is permitted free of charge
for agricultural or domestic purposes of the
inhabitants of the village in which it lies
(Baikampadi) or of neighbouring villages.
This may be presumed to embody the
custom and the privilege allowed by
Govt for very many years and unless
the plaintiffs can produce that order
of Govt 1261 granting them the sole
right they can not claim that right.

2. When I was in Sudder Dr of Wodeyar
I had a similar dispute between neighbouring
villages as to who had the right to graze
their cattle on a certain forest tract. To the
best of my recollection there is a definite provision
somewhere that in case of any dispute the
Collector shall decide. This is probably
in the Forest Manual so please please
examine. If you can't find it
by the Forest Code and ask in the
Forest Office.

SECY.
10 SEP 1936

10/9

Refee :- M2's remarks at pp 3-4 above.

Attention is invited to rule 7 of the rules framed under section 26 of the Madras Forest ~~Code~~ Act.

This rule is applicable to unreserved lands other than kumaki lands. No kumaki privileges can presumably exist in respect of the land in question which is a poramboke. There is no definite information on this point in the records submitted by the Clr.

The Clr's attention may be invited to rule 7 of the rules framed under section 26 of the Madras Forest Act and if no kumaki privileges exist in respect of the land he may be asked to submit suitable amendments to the draft written Statement with refee to the provisions contained in this rule.

For orders.

13/9

What are kumaki lands?

13/9

13/9

Seey's query

"Kumaki" land is Govt waste land within 100 yards of assessed lands included in wargs (holdings) formed prior to fasli 1276 - Pl. see the appendix to G.O 302 Rev

dated 1.7.1996.

14/9

14/9

The answers claimed seem to be an exclusive forum of Kumaki. But there is no mention of Kumaki in the forest rules in the plaint.

I am not clear how reference to Rule 7 under Sec 26 will help to meet the plaintiffs case which is based on an earlier order & subsequent customs.

14/9

N This indicates that the forest rules are not in his favour.

N subsequent custom should be that contained in the Forest Rules. If these lands are not kumaki the right to cut grass is allotted to villages by the Collr if any dispute arises, see rule 7. But if they are kumaki, the guide is rule 7-A which does not say anything about settling such disputes. Whether kumaki or non-kumaki Govt rules exist for controlling this privilege and probably have existed for many years. The forest Dept & the Pltffs have not heard of the rules & do not justify their

being decreed as having enjoyed the privileges independently of the rule. I think we'd better get S.P. Madras to make the ord: it clear on this point

2/14/9

SLRO. 14 SEP 1938

16 SEP 1938

ON. Do not agree with the O.C. Prepare a O.C. note to send with the file to S.P. B/14/9

11.30/16.9

3.45 & PO 15/9

B/15.9

Secy

The following U.O note may be sent to S.P., Madras with refce to the Secy's orders.

U.O No. B6268/38-1 dt/15.9.38.

Suits - (S. Kanara Mangalore) - Mangalore D.M.

O.S. No. 318/38 - Baikampadi Vge - S. No. 10/1A

Reservation for rearing and cutting kaji grass - defence.

With his letter No. A_3 - 4612-38 dt/ 26.8.38, the Coll^r of S. Kanara has submitted proposals for the defence of the suit O.S No. 318/38 on the file of the D.M.C., Mangalore. The Board considers that the draft written statement submitted by the Coll^r requires to be suitably amplified with refce to the rules 7 and 7-A framed by the Govt under Sec 26 of

Para 5 of Madras Forest Manual Ch No. 35

the Madras Forest Act. ~~It is of the opinion~~ That the rules cited above are not in favour of the plaintiffs. The privileges Claimed seem to be an exclusive form of kumaki If these lands are not ~~If the~~ kumaki the right to cut grass is allotted to Villages by the Collr, if any dispute arises, under rule 7. Book I of them are kumaki, rule 7-A of the rules framed under sec 26 of the ~~Forests~~ Act applies. Whether kumaki or non kumaki rules framed by the Govt under the Forest Act exist for controlling this privilege and probably have existed for many years. The fact that the plaintiffs have not heard of the rules does not justify their being decreed as having enjoyed the privileges independently of the rules.

The G.P. is requested to be so good as to suggest how the draft written statt. submitted by the Collr. may be amended to make the above points clear. The suit is posted to 8.10.38 and an reply is requested.

Collr's Cur

This is not the O.O copy & process.

It should be typed & on a separate sheet.

15/9

15/9

15/9

§ 36 of the Forest Manual BTC NO 38.

~~A BNO B 6263/38-1~~ ~~dt 15-9-38~~

The atrocious W.O. typed on a sep sheet. by 15/9

To The G.P. Madras with records as per list:

1) Current File of 18 pages
2) Collr's Dis NO. 139 R. 1907
3) " D. Dis 2057/36
4) " R. Dis 6134/36
5) " D Dis 4459/37.
6) " D. Dis 2145/38
7) Mangalore Taluk D.R. 339 F. 1319
8) " Dis 263 R/1911
9) Map of the Mangalore T.K.

~~1 Record before~~

10.

B3 Misc B6652

Opinion No.32

B3 M 319

Suits - (South Kanara) - Mangalore District Munsif's Court - O.S.318/38 - Baikampadi village - S.No.10/1 Pro. Reservation for rearing and cutting Kaji grass - Defence.

Board's U.O.B.6263/38-A, dated 15-9-38.

7-8 NF

I agree that rule 7 would apply to this case but both that rule and Sec. 26 of the Forest Act preserve the customary rights, if any, vesting in individuals or communities (6 L.W.428). The Plaintiffs may, if they can, prove the existence of such right. Any enjoyment after the Act would be easily referable to Sec.7 and it may almost be impossible for them to give that quantity of proof which is necessary to prove a valid custom. In fact the rule merely records what used to be done even previously by sufferance of the Government on undisposed vacant land belonging to the Government. Rule 7 confers the privilege on "inhabitants of that or of neighbouring villages for agricultural or domestic purposes". When a dispute arises, the Collector has to decide which are neighbouring villages.

If any portion of the land is kumaki land (apparently it is not), it will be governed by rule 7-A.

Entry as poramboke for a special purpose does not imply any irrevocable dedication for that prupose or that class of people and may on such grounds as appear reasonable to the Revenue authorities be cancelled and the land may be diverted to other communal uses or may be even otherwise disposed of. See (1933) M.W.N.952 = 38 L.W. 85, (1930) M 621 - S.A.692/1926, 52 M. 25.

An

An additional paragraph, para 10-A may be added to the draft written statement.

p34 of Forest Manual 1st No. 38

10-A. The lands in question being unreserved land coming within rule 7 of the Rules framed under Sec.26 of the Madras Forest Act is governed by the provisions of that rule and the alleged enjoyment of the plaintiff, if any, is referable to the concessions allowed under that rule and cannot form the foundation of enforceable right or claim against the Government. Under that rule, the Collector has the absolute right to decide which are the neighbouring villages and the plaintiffs are bound by his decision and have no right to litigate in Civil Courts in respect of that matter. The privilege is not a legal right in respect of which an action will lie in Civil Courts. Any enjoyment prior to the framing of the rules, even if true, also is mere permissive enjoyment by sufferance of Government and it is totally inadmissible to infer an enforceable right against the Government from such permissive user.

If any portion of the land is kumaki (which must be ascertained) a further para may be added, viz., "A part of the lands is kumaki to the following lands and enjoyment if any is referable to the kumaki privilege allowed in South Kanara to adjoining wargdars and provided for in rule 7-A of the rules framed under Sec.26 of the Madras Forest Act and cannot form the foundation of an enforceable right against the Government. The second aspect of the question may also be more clearly brought out by a slight alterations in para 6.

p34 of Forest Manual 1st No 38

The records are herewith returned.

Madras, 26-9-38.

Government Pleader.

pp 7-8 N.F. Issued as Bdi U.O. No. B6263/38-1 dt 15 9 38

pp 9-10 N.F. B.6652 From Govt. P. Madras, Opinion No. 32 dt 26 9 38

To Secy -

Secy

It is not known definitely whether the suit land is kumaki or non-kumaki. The opinion of the Govt. P., Madras may be communicated to the Collr and he may be asked to send a revised draft written statt. Draft submitted.

LW 27/9

27.9.

28/9

p 19 Cf Issued as Bdi reject B 6253/38-2 dt 28 9 38

pp 21-26 Cf B.7001 From the Collr of S. Kanara

Secy

The Collr has submitted a revised draft written statement. The defence of the suit may be sanctioned and the draft written statement at pp 23-26 Cf may be approved subject to the substitution of the words "land set apart for the common use of the villagers" for "Communal land" in para 2 of the written Statement Draft submitted

p 23 Cf

LW 21/10

21.10.38

CIRCULATION CHECK SLIP.

D.P.No. Mis 2959 — Single Member.

Dated 21.10.38 — ~~Two Members.~~

Full Board.

I.A.	A.D.S. & L.R.	Asstt:Secy. Sep: L.R.	Sett.Rev.	J.S. Secy.	M M M - M - 3 2 1

(1) Open file seen by

(2) Final draft seen by

(3) Now circulated to.

(4) Initials.

Passed for record.

~~**Secretary~~

Joint Secretary.

~~A.S. (L.R)~~

A.S. (Sett)

A.S. (Sep:Rev)

~~A.D.S. & L.R.~~

I.A. 28.10.38

**Note.- INTRIES NOT REQUIRED TO BE SCORED OUT.